THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14527 OF 1996

ORAL ORDER:

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This writ petition is filed seeking a declaration that the action of the 1st respondent – Special Deputy Collector, Tribal Welfare, Rampachodavaram, East Godavari District, in directing enquiry in L.T.R.P.No.48/1995 under the provisions of A.P. Scheduled Areas (Land Transfer) Regulation 1 of 1959 as arbitrary and illegal.

It is contended by the petitioners that they are lawful owners and possessors of the land in R.S.No.40/2; 40/3; 40/4; 40/6 and 47 measuring Ac.22.07 cents situated in Singampalli village of Rajavomnangi Mandal of East Godavari District.

Though it is not in dispute that the said lands are notified as scheduled area, the petitioners contended that their possession is not in contravention of the provisions of the Regulation 1 of 1959 and that their title was upheld earlier in L.T.R.P.Nos.19/1976; 42/1988; 104/1988 and 15/1992. Thus, it is contended that the 1st respondent has no jurisdiction to initiate fresh proceedings on the basis of the allegations made by respondents 2 and 3.

The 1st respondent filed a detailed counter-affidavit stating that L.T.R.P cases previously initiated were between different parties. The names of the parties to the above cases and the lands covered by the said proceedings were furnished in the counter-affidavit and it is contended that L.T.R.P.No.48 of 1995 is a fresh case and the burden of proof lies on the petitioners to show as to how the schedule lands have come into their possession.

The law is well settled that the competent authority can initiate fresh proceedings in respect of the very same land in case any fresh material is available and to arrive at an independent conclusion.

In **SPECIAL DEPUTY COLLECTOR (TRIBAL WELFARE) v. DATLA VENKAPATHI RAJU**[1], having considered an identical

issue, it was held by a Division Bench that where the issue that arose for decision in the earlier proceedings and in the fresh proceedings is different and where the parties to the proceedings are different, the fresh proceedings cannot held to be illegal. In the said decision, the Division Bench has also accepted the view expressed in **G. RAGHAVULU vs. AGENT TO GOVERNMENT**[2] that the principle of *res judicata* shall be applied with caution in dealing with a case arising under the Regulation meant for the protection of the tribes and if the proceedings were dropped earlier for the reason that the tribal could not produce sufficient evidence, it does not preclude a subsequent enquiry.

In the case on hand, the petitioners could not place before this Court any material to show that either the petitioners or the respondents 2 and 3 were parties to the earlier proceedings, which were disallowed by the Special Deputy Collector. In the circumstances, the orders in the earlier cases cannot operate as *res judicata* and the 1st respondent cannot be restrained from proceeding with the enquiry in L.T.R.P.No.48 of 1995.

Accordingly, the writ petition is disposed of leaving it open to the 1st respondent to proceed with the enquiry in L.T.R.P.No.48 of 1995 and pass appropriate orders in accordance with law. The petitioners herein are granted liberty to submit their explanation, if not already submitted, along with evidence to substantiate their case, within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that *status quo* as on today as to the nature and possession of the schedule land covered by L.T.R.P.No.48 of 1995 shall be maintained till the enquiry is completed and appropriate orders are passed. No costs.

(G. ROHINI, J.)

28th November, 2006.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14527 OF 1996

28th November, 2006.

Between:

Kanigiri Chakrapani and others. .. Petitioners.

And

The Deputy Collector (T.W.),
Rampachodavaram, East Godavari District
and others. .. Respondents.

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[1] 2002 (4) ALT 669 (D.B.)

[2] 1994 (2) An.W.R. 216